



PATENT

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5-27-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT EXAMINING DIVISION

In re the Application of Gerhard J. Haas

Serial No. 10/046,897

Filed: Jan. 17, 2002

Art Unit 1651  
Examiner Susan D. Coe

For: Hop-Based Udder and Teat Dips and Washes

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REQUEST FOR RECONSIDERATION

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S I R:

In response to the Official Action mailed April 8, 2003, it is respectfully requested that the Examiner reconsider the basis of her rejection in view of the Declaration of Yukie Kurashina, executed on May 8, 2004, a copy of which is annexed hereto.

All of the claim rejections rely, either in whole or as part of a combination of references, on a Japanese Application which, quite frankly, attempts to block the art, citing so many different substances as being effective against mammitis in cows that there are few plant genera that it does not disclose. However, the Examiner relies on it heavily, saying in paragraph 6 of the Official Action, "However, while the reference might not specifically disclose using the hops composition as a wash or a dip, the reference does teach that the hops composition can be applied to the skin. Thus a person of ordinary skill in the art would clearly understand the

benefits of applying the hops composition to the infected area using a washing or a dipping procedure.”

It is respectfully requested that the Examiner review her position on the basis of the more precise, partial translation of the Japanese Application, which makes clear that the reference discloses applying the herb through the skin, rather than to the skin.

On careful reexamination of the translation of the Japanese application first submitted by the applicant, the only place that the word “skin” is mentioned is on page 6 of the translation:, as follows:

“The method of giving it is either oral or non-oral administration. As non-oral administration, intramuscular, intra? stomach, skin, nasal and vein administrations can be used.”

First, it will be apparent that the translator was not skilled in the English language. Note the stilted manner in which the English language is used. Also, the translator had some difficulty with the word “intra,” putting a question mark after it. Yet these are precisely the words that are important.. The newly submitted translation, annexed as Exhibit A, is by a person of Japanese birth who is a horticulturist at the New York Botanical Garden in The Bronx, New York. [par. 2] Her literal translation of the paragraph that mentions “skin” is as follows:

“The method of giving it is either oral or non-oral administration. As non-oral administration, intramuscular, intrastomach, percutaneous, nasal and vein administration can be used. She further says, “A literal translation of the third (percutaneous) method of non-oral administration is ‘through the skin’”.

It is, therefore, respectfully submitted that what the Japanese Application teaches is that the herb can be administered by means of injection through the skin, which would lead one of skill in this art away from any administration as a wash or dip, which are far simpler than

injecting a needle into an animal. Further, the fact that administration "through the skin" is the correct, literal translation is borne out by the other methods of non-oral administration: intramuscular, intrastomach, nasal and vein administration. These are all methods in which the herb is applied into a cavity in the body, not merely on the outside of the body with the hope that some of the herb will enter the body, itself. By "intrastomach" and "intramuscular" the applicant is contemplating the use of a syringe; so the same is likely to be the case with the term "percutaneous," *i.e.*, it contemplates using a needle and syringe and injecting the animal with the herb. However far-fetched the idea is of injecting an herb into the stomach of a cow, that is what this "block the art" application goes so far as to teach.

It is axiomatic that a reference must be considered for all that it teaches, including disclosures that teach away from the invention at hand as well as those that point toward it.

*Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 227 USPQ 657, 666 (Fed. Cir. 1985).

Thus, the Examiner is respectfully requested to examine the entirety of the Japanese application.

With respect to amounts of herbs to be used, that is stated in the paragraph immediately preceding the paragraph at issue. Concerning dosage the application says:

"The dosage of the herb is between .0001 mg - 100 g's weight of the cattle per day. The amount of this is different between for using as prevention and for using as remedy. In general more amounts are used for the remedy." [page 6, 3rd full par.]

This paragraph specifies that the amount of herb is based on the weight of the cattle. Obviously any such calculation has nothing to do with applying a solution of herb to the udders and teats, or even the skin, of cattle. Were any such application contemplated, it would not be based on the weight of the cow, but on other factors, such as the concentration of the herbal extract. Instead, a calculation of the quantity of herb based on the animals weight is

consistent with putting the herb in cattle feed. To an extent it is consistent with injecting quantities of herb into the stomach or muscles of the cow or, indeed, percutaneously into a cow. Basing the quantity of herb on the weight of the cow is not consistent with applying the herb to the exterior of the cow's skin which, after all, is the essence of the present application.

With respect to the so-called Studies {Examples} of the Japanese application, they, too, do not support a disclosure of the application of an herbal solution to the skin of a cow. Study 1 is a laboratory study of the effectiveness of herbs on staph in a Petri dish. That was strictly "intralaboratory." In Operation 1 herbs were added to feedstuffs and fed to cattle. In Operation 2, herbal extracts were fed to cattle in an aqueous solution as a water substitute. Nowhere else in the Japanese application is there any reference to administration percutaneously, or through the skin.

In summary, it is respectfully submitted that the Examiner has taken an isolated disclosure in an admittedly enigmatic Japanese application and states that the herbal extract can be applied *to the skin*, when it is really stated to be applied *through the skin*. Applicant admits that the sloppy translation it submitted did not help. The reference's disclosure is stated to be "isolated" because there is no other mention in the application of any such method of administration, leaving to the imagination just what is disclosed. Yet it is submitted that from its surrounding terms (*intramuscular* and *intrastomach*) and calculation of amounts of herbs used based on cattle weight, no skilled person would believe that application through the skin means application to the skin. No such disclosure is even suggested because it is inconsistent with the remainder of the application as well as the calculation of herbal concentrations.

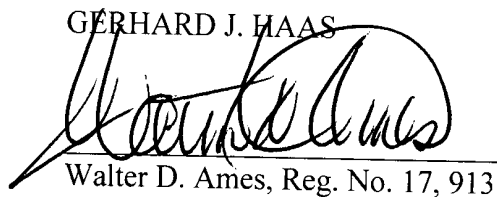
As the primary reference cited by the Examiner, used in every Section 103 rejection of the claims, it is respectfully submitted that the Japanese application should be

interpreted by what it clearly and definitely discloses. Language ambiguities should not be interpreted against this applicant. As JP '332 discloses non-oral administration of a hops extract *through rather than to the skin*, it is submitted that it teaches away from washing or dipping, which are simpler procedures. Therefore, JP'332, either used alone or in combination with other references, would not motivate a skilled artisan to use a hops composition as a wash or dip for the teats and udders of cows, which is the essence of each of claims 1 to 8 now under consideration in the present application. Favorable reconsideration is respectfully requested.

Respectfully submitted,

GERHARD J. HAAS

Dated: May 19, 2003



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Declaration of Yukie Kurashina

Yukie Kurashina, being hereby informed and advised, deposes and declares as follows.

1. I am a permanent resident of the United States residing in Tuckahoe, New York. Having been born in Japan, I am thoroughly familiar with the Japanese language.
2. In addition, I am presently employed as a horticulturist at the New York Botanical Garden, in Bronx, New York, where I sometimes help scientists and administration department with translation of literature written in Japanese into English.
3. I have been requested to furnish a literal translation of a portion of Japanese Patent Application No. 01172332 A, being informed that a translation into English is important with regard to its accuracy. In particular, I have been referred to the paragraph on page 5 of the Japanese application, which begins: "The method of giving it...."
4. Based on my knowledge of Japanese and horticulture, a literal translation of that paragraph is: "The method of giving it is either oral or non-oral administration. As non-oral administration, intramuscular, intrastomach, percutaneous, nasal and vein administration can be used." A literal translation of the third (percutaneous) method of non-oral administration is "through the skin."
5. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 8, 2003.

  
Yukie Kurashina

EXHIBIT

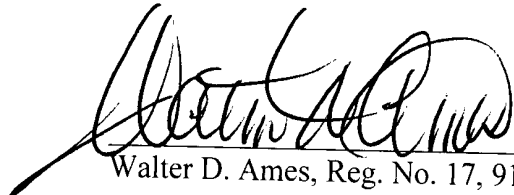
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CERTIFICATE OF MAILING

It is hereby certified that on May 18, 2003 this correspondence is being deposited with the United States Postal Service as first-class, postage-prepaid mail in an envelope addressed to .

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Walter D. Ames, Reg. No. 17, 913

May 18, 2003